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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,171	03/05/2001	Henry W. Sullivan	Tie Tek-001	3592

7590 09/05/2003

THE MATTHEWS FIRM  
1900 West Loop South, Suite 1800  
Houston, TX 77027

EXAMINER

CAIN, EDWARD J

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**BEST AVAILABLE COPY**

**Office Action Summary**

Application No.

09/800,171

Applicant(s)

Sullivan

Examiner

Edward Cain

Group Art Unit

1714

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- ☒ Responsive to communication(s) filed on 5/27/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

- ☒ Claim(s) 1-11, 13-17 and 29-50 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 2-11 and 16 is/are allowed.
- ☒ Claim(s) 1, 13-15, 17, 29-32, 35-40 and 43-50 is/are rejected.
- ☒ Claim(s) 33, 34, 41 and 42 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

**Application Papers**

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

**Attachment(s)**

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

**Office Action Summary**

Art Unit: 1714

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

2.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 13-15, 17, 29 and 43-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Sullivan et al.

Sullivan et al disclose polymeric composition suitable for the production of railroad ties and lumber (abstract and column 1, lines 5-67). These compositions are taught as comprising thermoplastic polymer, rubbery polymer and <sup>mica</sup> ~~unclal~~ in relative amounts of at least overlapping those claimed instantly (claim 1). The final articles are taught as being formed by both extrusion and molding processes (column 8, lines 10-12).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 30-32, 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan et al.

The disclosure of Sullivan et al as described above is repeated here by reference.

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While Sullivan et al does not detail specific molding steps, those recited in the rejected claims are seen are conventional to the molding arts and would have been obvious to one of ordinary skill in this art.

6. Claims 33, 34, 41 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 2-11 and 16 are allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cain whose telephone number is (703) 308-0042. The examiner can normally be reached on Monday-Friday 10:00 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

E. Cain/dh  
August 13, 2003

